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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,344	01/08/2007	Gary L. Bowlin	OGA-008.01	8665

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EXAMINER	
NAFF, DAVID M	

ART UNIT	PAPER NUMBER
1657	

MAIL DATE	DELIVERY MODE
10/14/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/588,344	BOWLIN ET AL.	
	Examiner	Art Unit	
	David M. Naff	1657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 July 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *3,8,9 and 15-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3,8,9 and 15-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 August 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *12/5/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

A response of 7/1/09 to a restriction requirement of 6/3/09 elected Group III claim 3 without traverse.

An amendment filed 7/1/09 amended claims 8 and 9 by making the claims dependent on claim 3, canceled claims 4-7 and 10-14, and added new claims 15-31 dependent on claim 3.

Claims examined on the merits are 3, 8, 9, and 15-31, which are all claims in the application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 8, 9, and 15-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, and where recited in any other claim, "electroprocessed fibrinogen" is unclear as to meaning and scope. The difference in physical and chemical properties of fibrinogen that is electroprocessed and not electroprocessed is uncertain. Being electroprocessed depends on a process of electroprocessing. The term "electroprocessed" encompasses numerous different processes of electroprocessing. In the absence of electroprocessing steps used to produce the claimed electroprocessed fibrinogen, one cannot be certain as to the specific nature of the electroprecessed fibrinogen required by the claims. For the same type of reasons, "electroprocessed synthetic polymers" in claim 16 is unclear as to meaning and scope.

In claim 8, requiring the composition of claim 3 to further comprise "one or more substances" is confusing since the matrix, electroprocessed fibrinogen and water in claim 3 are

substances. How the substances in claim 8 differ from matrix, electroprocessed fibrinogen and water, which are also substrances, in claim 3 is unclear.

In line 1 of claims 18 and 19, "the electroprocessed fibrinogen fibers" does not have clear antecedent basis. Claim 3 does not require the electroprocessed fibrinogen to be fibers.

In claim 28, "substantially dry" is unclear as to meaning and scope. The degree of dryness required by "substantially" is uncertain. The difference in substantially dry and not substantially dry is indeterminate.

Claim 31 is confusing and unclear by requiring a process limitation of electroprocessed from a solvent comprising a halogenated alcohol, and not setting forth all steps for a complete process. Reciting a single process step in the absence of other process steps required for a complete process makes unclear how the single process step defines the nature of the electroprocessed fibrinogen.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 3, 8, 9, and 15-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Bowlin et al (7,374,774).

The claims are drawn to a composition matrix comprising electroprocessed fibrinogen, which is insoluble in water.

Bowlin et al disclose a composition comprising an electroprocessed material and a substance, which are in the form of a matrix (col 2, lines 23-34). The matrix may be composed of electroprocessed fibrinogen (col 41, line 31).

The composition containing electroprocessed fibrinogen disclosed by Bowlin et al is the same as the composition presently claimed. The electroprocessed fibrinogen is inherently insoluble in water. Components and conditions of dependent claims are disclosed by Bowlin et al, or are inherent properties of the electroprocessed fibrinogen of Bowlin et al. Bowlin et al has a different inventive entity from the inventive entity of the present invention. Therefore, the Bowlin et al patent is a proper reference since it is a continuation of an application having a filing date before provisional application 60/416,026.

Kisiday et al (7,449,180) and Pathak (6,887,974) are made of record to further show matrices.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 3, 8, 9, and 15-31 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 7,374,774. Although the conflicting claims are not identical, they are not patentably distinct from each other because the presently claimed composition comprising electroprocessed fibrinogen would have been obvious from the electroprocessed material of the claims of the patent which can comprise electroprocessed fibrinogen (last line of claim 5).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is 571-272-0920. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on 571-272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David M. Naff/
Primary Examiner, Art Unit 1657

DMN
10/10/09